IN THE HIGH COURT OF BOMBAY AT GOA

MISCELLANEOUS CIVIL APPLICATION NO. 19 OF 2006
IN
STAMP NUMBER MAIN NO. 149 OF 2006

1. Mineria Nacional Limitada,
   A partnership firm having its
   office at Salgaocar Chambers,
   P. O. Box. No.114,
   Margao Goa – 403 601.

2. Shri Anil Vasudeva Salgaocar,
   Managing Director of Appellant No.1.
   Salgaocar Chambers,
   P. O. Box No.114,
   Margao, Goa-403 601. ... Applicants

versus

1. Sociedade De Fomento Industrial
   Pvt. Ltd., a private company
   limited by Shares, incorporated
   as per the provisions of the
   Companies Act, 1956 and having
   its Registered Office at Villa Flores
   Da Silva, Erasmo Carvalho Street,
   Margao, Goa – 403 601.

2. Mr. Avdhut M. Timblo, of Goa,
   Indian Inhabitant, the Managing
   Director of the 1st Respondent
   Company, having its address at
   Villa Flores Da Silva, Erasmo
   Carvalho Street, Margao, Goa-403 601.

3. Mr. Dilip M. Timblo, of Goa,
   Indian inhabitant. Executive & Special
   Economic Advisor to the Company,
   having his address at Villa Flores Da
   Silva, Erasmo Carvalho Street,
   Margao, Goa – 403 601.

4. Mr. Francise Lume Pereira, of Goa,
   Indian inhabitant, General Manager
   (Marketing & Sales), Director of 1st
   Respondent Company, Residing at
   33/212, Senaulim Verna, Goa-403 722.

5. Mr. M. A. Hazare, of Goa,
   Indian inhabitant, Financial
   Controller & Chief Accountant
   of the 1st Respondent Company,
   residing at B-9, Sapana Heritage,
   Borda, Margao, Goa-403 601.

6. Mr. S. P. Bhat, of Goa,
   Indian inhabitant, Executive
   Taxation of the 1st Respondent
   Company, Residing at A-1,
   Raghav Co-operative Housing
   Society Ltd., Borda, Margao,
   Goa-403 601.

7. Mr. A. Timblo, son Sh, Avdhut
   Timblo, of Goa, Indian inhabitant,
   Residing at Dona Paula Apartment,
   Near Ocean Heart,
   Dona Paula, Goa.

8. Infrastructure Logistic Private Limited,
   A Company registered under the
   Companies Act, 1956, having its
   registered office at Hotel Cidade De
   Goa, Vainguinim Beach, Goa-403 004.

9. Prime Minerals Exports Private
   Limited, A company registered under
   Companies Act, 1956, having its
   registered office at 1st Floor, Velho
   Building, Opp. Municipal Garden,
   Panaji-403 001, Goa.

10. Mr. Prashant M. Timblo, of Goa,
    the Joint Managing Director of
    the 1st Respondent Company
    and having his address at
    Samara, Samudra Drashan, Goa
    University, P.O. Bambolim,
    Goa – 403 206.

11. Mrs. Sushila Modu Timblo,
    of Goa, Indian inhabitant,
    Widow of Late Mr. Modu
    Ganesh Timblo, Residing at
    “Zaivanti”, Fr. Anglo Road,
    Behind Chougale College,
    Cuppangal Gopal, P.O. Fatorda,
    Margao, Goa – 403 801. ... Respondents

Mr. A. N. S. Nadkarni, Advocate for the Applicant.

Mr. J. E. Coelho Pereira, Senior Advocate with Mr. I. Aga, Advocate for the Respondent No.2.

Mr. Abeezar Faizullabhoy, Advocate for the Respondent No.7, 8 and 9.

Mr. J. A. Lobo, Advocate for the Respondent No.10.

CORAM : N. A. BRITTO, J.

DATE : 23RD MARCH, 2007.

JUDGMENT

Heard Mr. A. N. S. Nadkarni, the learned Counsel on behalf of the applicant and Mr. J. E. Coelho Pereira, the learned Senior Counsel on behalf of the respondent no.2, other respondents supporting him in his arguments.

2. The applicant has filed an application dated 16-1-2006 for condonation of delay to file an appeal under Section 10F of the Companies Act, 1956(Act, for short) against the Order dated 26-9-2005 of the Company Law Board.

3. This application has taken full circle so to say. It was filed before the Company Judge of this Court, dealing with Company matters but by Order dated 7-7-2006 was directed to be placed before the Division Bench and the Division Bench in turn by Order dated 29-8-2006 held that the view taken in Bais Surgical & Medical Institute Pvt. Ltd. needed reconsideration and after that, the matter was referred to the Full Bench. The learned Full Bench by its decision dated 4-10-2006 held that an appeal from a decision or order of the Company Law Board, filed under Section 10F of the Act is required to be entertained and disposed of by a Single Judge and not by the Division

Bench. The Apex Court in **Stridewell Leathers(P) Ltd. and others** v. **Bhankerpru Simbhaoli Beverages(P) Ltd.**(AIR 1994 SC 158) held that the High Court in Section 10F of the Act means the High Court having jurisdiction in relation to the place at which the registered Office of the Company concerned is situated as indicated by Section 2(11) r/w Section 10(I2)(a) of the Act.

4. There is no dispute that the Order sought to be appealed was passed by the Company Law Board on 26-9-2005 and it was received by the applicant on 30-9-2005 but the applicant instead of filing the appeal before this Court, filed the same before the Delhi High Court on 18-10-2005 and the Delhi High Court passed an Order on 14-12-2005 which was received by the applicant on 19-12-2005 and the appeal along with the application under consideration came to be filed before this Court on 16-1-2006.

5. Section 10F deals with an appeal against the order of Company Law Board, and, provides that any person aggrieved by any decision or order of the Company Law Board made before the commencement of the Companies(Second Amendment Act, 2002) may file an appeal to the High Court within sixty days from the date of communication of the decision or order of the Company Law Board to him on any question of law arising out of such order :

Provided that the High Court may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding sixty days.

6. There is no dispute that the applicant did not file the appeal within the first sixty days but has filed the same on the next sixty days provided for by the proviso to Section 10F of the Act and in fact it has been stated that it was filed with a delay of 110 days. The opposition to the application started with the note that the provisions of Section 14(2) of the Limitation Act were unavailable to the applicant and this submission was made placing reliance on the case of **The Commissioner of Sales Tax** v. **M/s Parson Tools and Plants, Kanpur**(AIR 1975 SC 1039). After that the applicant sought leave to file additional affidavit. The initial application was filed contending that the applicant was pursuing its remedy against the impugned Order diligently and bona fidely before the Delhi High Court and therefore the time had to be extended by setting off the time spent before that High Court. Alternatively, it was submitted that that itself constituted sufficient cause for not preferring the appeal within sixty days. Thereafter, on behalf of the applicant additional affidavit was filed dated 23-11-2006 stating that the impugned Order dated 26-9-2005 passed by the Company Law Board was received by its lawyers in Delhi on 30-9-2005 and that their lawyer Shri Nikhil Majitya advised the applicant that the impugned Order had to be challenged before the Delhi High Court and it is as per his advice that the appeal was filed before the Delhi High Court on 18-10-2005, being Company Appeal No.24/2005 and that when the matter came up for hearing before the Delhi High Court on 14-12-2005 the applicant's lawyer sought leave to withdraw the same with liberty to approach the Court of competent jurisdiction and the Delhi High Court was pleased to allow the applicant to withdraw the said appeal on 14-12-2005 as it had no territorial jurisdiction to entertain the said appeal in view of the decision of the Apex Court in **Stridewell Leathers(P) Ltd. and others** v. **Bhankerpru Simbhadi Beverages(P) Ltd.**(supra). It is stated that a copy of the said Order dated 14-12-2005 was received by the applicant's lawyer on 19-12-2005 and was forwarded

to the applicant on 20-12-2005. It is also stated that the applicant's Managing Partner had travelled to Hong Kong to attend a business conference on 18-12-2005 and returned to India on 24-12-2005 and approached his lawyer in Goa to file the appeal wherein he was informed that due to ensuing Christmas vacation the appeal could not be filed till the re-opening of this Court. It is also stated that on 29-12-2005 he left for Hong Kong via Singapore to attend another business conference and returned only on 7-1-2006 and immediately approached his lawyers in Goa and the appeal was filed before this Court on 16-1-2006. It is stated that the applicant was under the impression that the time taken before the Delhi High Court would be excluded as the applicant was bona fidely persuading the remedy before the Delhi High Court. As per the applicant if the period of 59 days which the applicant took in pursuing the remedy before the Delhi High Court is excluded the present appeal is filed well within the prescribed period of limitation since the prescribed period is sixty days which can be extended by another sixty days if the party shows cause. It is also stated that the applicant has been pursuing the remedy against the impugned Order dated 26-9-2005 diligently and bona fidely before the Delhi High Court as the applicant was advised by their lawyers to file the appeal there and therefore the applicant should not be put to prejudice because of the misguidance from their lawyer.

7. In **The Commissioner of Sales Tax** v. **M/s. Parson Tools and Plants**(supra) the Apex Court was concerned with the provision of Section 3-B of Section 10 of the U. P. Sales-Tax Act, 1948 which provided that the application under sub-section(3) shall be made within one year from the date of service of the order complained of, but the Revising Authority may on proof of sufficient cause entertain an application within a further period of six months. As rightly pointed out on behalf of the

applicant the revision petitions in that case were filed more than 18 months after the dismissal of the appeals which was the maximum period of limitation prescribed by sub-section(3) of Section 10 and therefore were prima facie barred. In the case at hand, the application has been filed if not within the first sixty days but within the next sixty days as provided by the proviso. The Apex Court referring to the said sub-section(3-B) observed that three features of the scheme of the aforesaid provision were noteworthy. The first was that no limitation was prescribed for the suo motu exercise of its jurisdiction by the Revising Authority. The second was that the period prescribed for filing an application for revision by the aggrieved party was unusually long. The third was that the Revising Authority had no discretion to extend this period beyond a further period of six months, even on sufficient cause shown. The Apex Court therefore observed that the three stark features of the said scheme and language of the above provision, unmistakably show that the legislature has deliberately excluded the application underlying Sections 5 and 14 of the Limitation Act, except to the extent and in the truncated form embodied in sub-section(3-B) of Section 10 of the Sales Tax Act and therefore the High Court was in error in importing whole hog the principle of Section 14(2) of Limitation Act into Section 10(3-B) of the Sales Tax Act. The Apex Court further observed that the principle that emerged is that if the legislature in a special statute prescribes a certain period of limitation for filing a particular application in clear terms that such period on sufficient cause being shown, may be extended, in the maximum only upto a specified time limit and no further, then the Tribunal concerned has no jurisdiction to treat within limitation, an application filed before it beyond such maximum time limit specified in the statute, by excluding the time spent in prosecuting in good faith and due diligence any prior proceeding on the analogy of Section 14(2) of the Limitation Act.

8. The decision in **Fairgrowth Investments Ltd.** v. **Custodian**((2004) 11 SCC 472) came up for consideration before the Full Bench of this Court in Miscellaneous Civil Application No.424 of 2006 decided on 31-1-2007 in the case of **The Commissioner of Income Tax** v. **M/s. Velingkar Brothers** wherein the Full Bench considered whether Section 5 of the Limitation Act, 1963 would apply in a case of an appeal filed under Section 260A of the Income Tax Act, 1961. Referring to Section 29(2) of the Limitation Act, 1963, this Court referred to **Mukri Gopalan** v. **Cheppilat Puthanpurayil Aboobacker**(AIR 1995 SC 2272) and observed that the following twin conditions must be satisfied for the applicability of Section 29(2) of the Limitation Act, namely, (i) there must be a provision for period of limitation under any special or local law in connection with any suit, appeal or application; (ii) The said prescription of period of limitation under such special or local law should be different from the period prescribed by the schedule to the Limitation Act and that in **Fairgrowth Investments Ltd**. v. **Custodian**(supra) the Apex Court had added additional dimension for applicability of Section 29(2) to the twin requirements exposited in **Mukri Gopalan v. Cheppilat Puthanpurayil Aboobacker**(supra) in that the special local Act should not expressly exclude the application of the Limitation Act. The word “exclusion” also includes “exclusion by necessary implication”. This Court held that the legislature did not intend to make the provision of Section 260A watertight. The exclusion of the provisions of Sections 4 to 24 of the Limitation Act as provided in Section 29(2) could not be lightly interfered. To infer the exclusion of Section 5 of the Limitation Act, 1963, by necessary implication the language of Section 260A must suggest that the provision contained therein is mandatory and compulsive and though not expressly stated, the legislature intended unequivocally that the provisions of Section 5 of the Limitation Act are impliedly excluded. This Court further observed that when the statute is silent, the

presumption is not drawn automatically about the exclusion of Section 29(2) or for that matter Section 5 of the Limitation Act. This Court further observed that there is nothing to indicate that the application of Section 29(2) is excluded except providing a special limitation. Section 260A did not necessarily imply the exclusion of Sections 4 to 24 of the Limitation Act. Referring to **Fairgrowth Investments Ltd.** v. **Custodian**(supra) this Court observed that in that case the Supreme Court was concerned with the question whether the Special Court was constituted under the Special Court(Trial of Offences Relating to transactions in Securities) Act, 1992 had the power to condone the delay in filing the petition under Section 4(2) of the Act. In holding Section 29(2) of the Limitation Act, 1963 did not apply to the proceedings under Section 4(2), the Supreme Court principally relied on three grounds; (1) that the time limit for filing the petition for objection under Section 4(2) was mandatory and compulsive in the sense that the period prescribed cannot be extended by the Court under any inherent jurisdiction of the said Act; (2) an express provision for condonation of delay under Section 10(3) and (3) non obstante provision in Section 13 i.e. Section 13 had an overriding effect. This Court observed that the analogy flowing from the aforesaid three grounds could not be applied to Section 260A. Firstly, Section 260A by providing that appeal shall be filed in 120 days only provides for special period of limitation and the language does not make it so compulsive so as to exclude the power of condonation of delay; Secondly, and equally importantly, there is no provision of overriding effect in Section 260A or elsewhere in Income Tax Act in this regard. At the cost of repetition, it may be observed that the applicant is within the sixty days provided for by the proviso to Section 10F of the Act.

9. In **State of Goa** v. **Western Builders**((2006) 6 SCC 239) the Apex Court was dealing with Section 43 of Arbitration and Conciliation Act, 1996 which inter alia provided that the Limitation Act, 1963 shall apply to arbitrations as it applies to proceedings in Court. The Apex Court held that if special period of limitation has been prescribed for making application for any condonation of delay or for any other purpose then that period of limitation prescribed under the special law shall prevail and to that extent the provisions of the Limitation Act shall stand excluded. The Apex Court further held that under the Act of 1996 for setting aside the award on any of the grounds mentioned in sub-section(2) of Section 34 the period of limitation has been prescribed and that will govern likewise, the period of condonation of delay i.e. thirty days in the proviso. Referring to Section 14 of the Limitation Act, 1963, the Apex Court held that by virtue of Section 43 of the Act of 1996, the Limitation Act applied to the proceedings under the Act of 1996 and the provisions of the Limitation Act can only stand excluded to the extent whenever different period has been prescribed under the Act of 1996. Since there is no prohibition provided under Section 34, there is no reason why Section 14 of the Limitation Act should not be read in the Act of 1996 which will advance the cause of justice. If the statute is silent and there is no specific prohibition then the statute should be interpreted which advances the cause of justice.

10. There can be no dispute that while condoning delay what matters is not the length of the period but the acceptability of the explanation offered to condone the delay. The discretion given to the Court to condone delay and admit the appeal is to advance substantial justice and the approach to be adopted should be liberal so that the phrase “sufficient cause” should be concerned as adequately elastic to enable the Court to apply to the law in meaningful manner. In **Ram Nath Sao and others** v.

Gobardhan Sao and others((2002) 3 SCC 195) the Apex Court observed that the expression "sufficient cause" should be given a liberal interpretation to ensure that substantial justice is done, but only so long as negligence, inaction or lack of bona fides cannot be imputed to the party concerned. In the case of **Gurubachansingh and another** v. **Mukatarsingh**(2005 Vol.107(1) Bom. L. R. 585) this Court referred to two decisions of the Apex Court. The first is the case of **Ghasi Ram and others** v. **Chait Ram Saini and others**(AIR 1998 SC 2476) wherein the Apex Court observed thus:-

> "If on examining the facts, it is found that there was no lack of due care, there is no reason why the plaintiff/appellant should not be accorded the benefits of Section 14 of the Act. Does the interest of justice demand that the plaintiff should be refused benefit of Section 14 of the Act on account of negligence on the part of his Counsel, ill-advising him to file a revision instead of filing a fresh suit? An illiterate litigant cannot be made to suffer when he is ill-advised by his Counsel. On the facts and circumstances of this case, we are satisfied that the plaintiff/appellant prosecuted the earlier civil proceeding in good faith".

11. This Court also relied on **M/s Concord of India Insurance Co.Ltd**. v. **Smt. Nirmala Devi and others**(AIR 1979 SC 1666) wherein the Apex Court observed thus:-

> "I am of the view that legal advice given by the members of the legal profession may sometimes be wrong even as pronouncement on question of law by

> Courts are sometimes wrong. An amount of latitude is expected in such cases for, to err is human and laymen, as litigants are, may legitimately lean on expert Counsel in legal as in other departments, without probing the professional competence of the advice. The Court may of course see whether in such cases there is any taint of mala fides or element of recklessness or ruse. If neither is present, legal advice honestly sought and actually given must be treated as sufficient cause when an application under Section 5 of the Limitation Act, is being considered. The State has not acted improperly in relying on its legal advicers".

12. On behalf of the respondents, it is contended that the concept of wrong legal advice has come subsequently and therefore the explanation is not bona fide. It is further contended that wrong legal advice was not a plea taken by them in the application originally filed. I am not inclined to accept the said submissions of the learned Senior Counsel. Initially, the applicant wanted to take the benefit of Section 14(2) of the Limitation Act and only when an objection in that regard was taken that they found the need to state more elaborately as to why they had preferred the appeal before the Delhi High Court i.e. based on advice given by its lawyer Shri Majitya. The expression "sufficient cause" has always been liberally construed, with a view to advance justice, for which Section 5 of the Limitation Act, has been enacted and in our case, the proviso, referred to herein above. Courts are not over strict in expecting such proof of suggested cause as it would accept for holding a certain fact established because the question does not relate to the merits of the dispute between the parties and if delay is condoned the merits of the dispute can be determined. However, this does not mean that the Court should readily accept whatever the party alleges to

explain away his default. If the Courts accept anything and everything stated by a party, then such a party will have the last laugh at the cost of his adversary. The Court is certainly required to scrutinize the cause shown and would be justified in considering the merits of the evidence led to establish the cause.

13. As stated by the Apex Court in the case of **Ram Nath Sao and others** v. **Gobardhan Sao and others**(supra) a balance has to be maintained. On one side the cause shown should not be rejected by finding faults in the facts stated to explain the delay. On the other hand, the Court is also required to take note of the fact that a valuable right is accrued to the other party which should not be defeated. In my view, the case law laid down by the Apex Court and reproduced in paras 10 and 11 hereinabove is on speaking terms or squarely applies to facts stated on behalf of applicant and narrated in paras 4 and 6 hereinabove.

14. Considering the facts stated on behalf of the applicant and which I have reproduced herein above, this is not a case where there has been negligence, inaction or lack of bona fides on the part of the applicant. On the contrary, they approached the Delhi High Court on wrong advice and the moment it was clarified they approached this Court without much delay. Considering the facts and circumstances of the case, this is a fit case to condone the delay. Order accordingly.

N. A. BRITTO, J.

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